

Quid Novi



VOL. V NO. 17

McGILL UNIVERSITY FACULTY OF LAW
FACULTÉ DE DROIT NIVERSITÉ McGILL

February 6, 1985
6 février, 1985

SUPREME COURT CLERKING

by Marcel Banasinski

The Supreme Court of Canada is our nation's highest court. It is viewed by many as a source of truth and justice and as the guardian of our constitution; others have taken a cynical view, regarding it as the ultimate source of ambivalence or as the judicial rubber stamp of the federal government. On January 31 Professor Perry gave an interesting and enlightening behind-the-scenes glimpse of the Supreme Court where he had clerked for Madame Justice Wilson.

Professor Perry began his talk with a brief history of the institution of clerking at the Supreme Court.

Clerks were introduced into the Supreme Court in 1970. Their arrival was met by ambivalence from the judges; some did not want any clerks while others didn't know what to do with them. Eventually their clerical duties became well-defined and they were accepted by the judges.

The requirements for becoming a clerk are that one possess a Canadian law degree with a good knowledge of both civil and common law, have high marks and good references, have a good knowledge of both French and English, and have a background which extends beyond law. The hiring requirements and procedures vary from judge to judge. Each judge usually hires two clerks and

the appointments are for one year beginning in September.

The function of the clerks is to provide the judges with legal assistance and advice. The clerks' duties consist primarily of writing legal memorandums but they also include miscellaneous duties such as writing speeches or submitting summaries of the cases being heard in the court.

There are three types of memos: the leave to appeal memo, the bench memo, and the judgement memo.

The leave to appeal memo advises the judge as to whether the case should be heard. In this matter, the correlation between the clerk's advice and the actual decision of the judge is very high.

The bench memo consists of information and advice on the merits of the case to the judge during the appeal.

The judgement memo is written by the clerk whose judge is writing the judgement. The overall effect of the memos on the decision of the judge ranges from nil to substantial.

The clerks work in a large room which is separ-

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Lt.-Col. Michel Crowe of the Canadian Military's Judge Advocate General's department told McGill law students last week that the new Charter of Rights has forced a variety of changes in military law and military discipline.

He outlined a system in which an average 11,000 to 12,000 charges a year are laid in a military popula-

tion of about 80,000. The vast majority are minor infractions penalizing recruits in what the movies call "Boot Camp".

About 40 to 50% of charges are for drug infractions which are strictly prosecuted while a large number fall under a section of the Code of Service Discipline used as a catch-

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ANNOUNCEMENTS

Déscription Sommaire du Programme de Maîtrise en Droit de la Santé

Université de Sherbrooke

Depuis le mois de septembre 1982, l'université de Sherbrooke offre un programme de maîtrise en droit de la santé.

Sans équivalent en Amérique du Nord, ce programme porte sur les divers aspects légaux, sociaux et administratifs du droit de la santé.

Au programme de cours s'ajoute une série de conférences données par des spécialistes invités (médecins, avocats, professeurs, fonctionnaires fédéraux ou provinciaux) sur des questions d'actualité.

Ce programme de maîtrise est ouvert aux licenciés en droit ainsi qu'aux professionnels de la santé disposant d'un diplôme universitaire. La satisfaction des exigences du programme conduit à l'obtention d'un diplôme de maîtrise en droit de la santé (LL.M.).

Pour tous renseignements, prière de s'adresser au:

Directeur du programme
Maîtrise en droit de la santé
Faculté de droit
Université de Sherbrooke
Sherbrooke, QC
J1K 2R1
(819) 821-7518

To All First Year Mooters

In order to accomodate students participating in Mooting I, the library hours have been extended as follows:

Tuesday, Feb. 12 to Thursday, Feb. 14: one hour until 11:45 p.m.

Friday, Feb. 15: one hour until 10:45 p.m.

Saturday, Feb. 16: no change - 10:00 a.m. to 6:00 p.m.

Sunday, Feb. 17: three hours: from 10:00 a.m. to noon and from 6:00 p.m. to 7:00 p.m.

Monday, Feb. 18: one hour until 11:45 p.m.

Forum National presents

The Honourable Mr. Justice Gerald LeDain
of the Supreme Court
of Canada

"Some Personal Views on
the Judicial Function
Today"

Thursday, February 7 at
1:00 p.m.

in the Moot Court

With the assistance of a subsidy from the Dean's office, the LSA is now providing copies of *Le Devoir*, the *Toronto Globe & Mail*, and the *New York Times* for student use. These newspapers can be found on the rack behind the periodicals display on the 4th floor of the library and are not to be removed.

To All First Year Mooters

Me. Michel Proulx of Proulx, Barot & Masson will be lecturing on oral pleading and factum writing, Thursday, February 7, 1985 at 5:00 p.m. in the Moot Court. Attendance is strongly recommended. Information re Mooting I will follow.

The Community Affairs Committee is looking for students interested in a short research project. The request comes from the Canadian Legal Advocacy, Information and Research Association of the Disabled. This project will involve compiling a case list on the transportation of disabled persons. The areas which will be covered are human rights, discrimination, denial of access, unequal treatment, parallel services and extra expenses. If you are interested in participating, please see Holly Cullen or Todd Sloan, or leave a message at the LSA office.

Thursday, February 7 at 7:00 p.m. in Room 101 Mtre. Michael Bergman will present a lecture on Quebec procedure. This is in response to popular implicit request by clinic staff but everyone is welcome to attend. It's the opportunity of a lifetime to penetrate the mysteries of procedure.

Transcript Verification Week of February 11

MCLAC Directors

**Clerking
at the
Supreme Court of Canada**

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ated from, and located above, the judge's chambers. The community setting of the workplace invites the clerks to partake in judicial conferences which consist of long in-depth discussions amongst themselves. Professor Perry admitted that, on occasion, the marathon discussion had changed his opinion on a matter in which he initially strongly believed. The shift in his opinion would sometimes be reflected in the decision of the judge.

Clerking is a worthwhile experience because it allows one to broaden and intensify one's understanding of the law and meet some very interesting and intelligent people. Clerking is also a contract between the clerk and the judge; it is a bi-directional conveyance of information and criticism - however, the price it exacts is high. Clerking for an individual judge involves a tremendous amount of work. The legal library is open to clerks twenty-four hours a day and on several occasions Professor Perry found himself in the library at three or four in the morning. The work is compounded by the fact that the clerks must do all their own secretarial chores.

Leaves to appeal to the Supreme Court are heard twice a month by three panels of three judges each. Since 1975 appeals to the Supreme Court have been granted only if the issues were of public or national importance.

Professor Perry stressed that the Supreme Court was not concerned with the correctness of the case. If

the issue was not important, the case was not heard even though it may have been wrongly decided in the lower courts. If the issue was important, leave to appeal was granted such that a decisive decision on the issue could be rendered even though the case had been correctly decided in the lower courts.

The clerks are instrumental in providing valuable information about the importance of the issues under appeal. It is the clerks' duty to examine the controversial issues throughout Canada and to advise the judges as to their national importance.

Professor Perry also stressed that the Supreme Court was not entirely insensitive to individual needs, especially in criminal cases and other special circumstances.

During the actual appeal the research on the merits and issues of the case by the clerks may be crucial since most lawyers don't have the time to thoroughly research their cases and may omit a relevant case. Professor Perry cited an example of a renowned and very competent lawyer who, while citing a case, was interrupted and reminded by a judge that the case had been overruled.

Professor Perry was realistic in admitting that clerical research is necessary because some of the lawyers who appear before the Supreme Court are quite incompetent. He added, however, that, because the Supreme Court is concerned with important issues rather than with the correctness of the case, bad counsel will usually not be detrimental to the client.

There has been a consistent backlog of cases in

the Supreme Court. This can be attributed to the power of the Supreme Court to determine how many appeals are to be granted and how many cases are to be heard each year. For example, in 1983 there were 492 requests for leaves of appeal and 119 leaves granted, of which only 80 were heard and 74 judgements rendered.

The backlog of cases may also be attributed to lawyers who spend an inordinate amount of time pleading their cases. Professor Perry recounted how Chief Justice Laskin would stare at verbose counsel and slowly sink into his chair. A wise counsel would end his pleading when he could no longer see the Chief Justice.

The distribution of cases heard by the Supreme Court is 25% in criminal law, 25-30% in constitutional law, 20-25% administrative law, and the rest consisting of family law, private law, and other miscellaneous laws. The increase in constitutional cases since the advent of the Charter may force the Supreme Court to hear fewer civil cases.

For any information concerning clerking at the Supreme Court contact Professor Perry or Professor Klinck.

Lost Books

3 Constitutional books, Magnet, Magnet Supplement and BNA Acts, were forgotten on the fifth floor of the library on Saturday, January 26th. If you have seen them since or have any information about them, please go to the S.A.O.

Reward promised.

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Rédactrice française Diane Brais
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CREDIT REFORM

A proposal to modify slightly the institution of semi-obligatory credits at McGill, adopted without dissent by the Faculty Curriculum Committee, has been placed on the agenda of tomorrow's (Thursday, Feb. 7) Faculty Council Meeting.

Although its content is admittedly not the most sexy of topics, the Committee's proposal has important implications for students.

The main objectives of the proposal are to enhance the attractiveness of the National Programme, achieve greater symmetry between the single-degree programmes, and generally to place students' freedom of choice on a more equal footing with that of other law schools. To these ends, the Committee has recommended the reduction of semi-obligatories from 15 to 6 credits on the Common Law side, and from 17 to 13 credits on the Civil Law side.

The Committee members were convinced that, in addition to preserving the integrity of both the B.C.L. and LL.B. degrees, the proposal is an important step toward achieving the above objectives. The total of obligatory and semi-obligatory credits will be identical whether a student begins in B.C.L. I or LL.B. I. (This is not the case under the present regime.) Students in the National Programme wishing to concentrate their upper year studies in public law areas will have greater opportunity to do so. Finally, the total of obligatory plus semi-obligatory credits will be approximately 56%, a ratio closer to, though still exceeding, that of most other law schools.

Please feel free to stop me and let me know your thoughts.

Daniel Gogek
Faculty Council Rep

This will be the first of a series of regular, bi-monthly classes to be given by Rabbi Z. Silberstein. The opening topic will be a text on modes of acquisition.

English translations of the original texts will be used. No background is required. The topics discussed will be ones of general interest to all students of law. Everyone is welcome.

Talmud Class
Date: Monday, February 11
Time: 1:00 p.m.
Place: Rm. 203

For information contact
Greg Borden.

SQUIRRELS INVADE

The Law complex includes "a fine 19th century mansion" the pamphlet promises prospective law school applicants. Last year that fact compelled me to assign McGill to the top of my I-hope-I-get-in-there list. This year I feel somewhat gyped. The lofty plane across which I had hoped to drift during the course of my legal education while ensconced amid the venerable tradition of Old Chancellor Day Hall teeters on the slippery slope of oblivion, as history and the hallowed house are being gnawed to the dirt by squirrels.

I had heard about interrupted Thursday afternoon seminars in the Common Room and distracted professors in their offices, but I felt obliged to undertake a little investigative reporting before committing any conclusions to print. I staked out the Common Room one afternoon last week, only pretending to be studious. I could hear their quick, tiny steps rolling from one end of the

room to the other, stopping only at points where the sound of teeth picking at ageless timber took over. There are squirrels in the attic.

With the rumours confirmed, I decided to solicit the informed opinions of our neighbours in the Stewart Biology Building. They proffered nothing useful, asking only, "do you have any shotguns over there?" I interpreted this inquiry as the snide insinuation that it was; that is, law students hover about in a paradigmatic universe, unwilling to ground themselves in petty (yet pressing) realities. I also took it as a challenge. Surely our collective efforts can yield a solution to this squirrel problem.

Since it was Prof. Baker who first brought the problem to the attention of my editor, I suggest that he and his colleagues take the initiative by gathering submissions from students on how to get rid of the

squirrels through the judicious use of exam questions. Fortunately, Foundations is over. I don't think anybody could respond to "what do you mean -- squirrels?" But equitable waste, adverse possession, nuisance and a variation on cattle trespass are just a few of the potential issues that come to mind. Aboriginal rights could be a stickler, but I am confident that we can get around that since, it seems to me, getting around things is just what being lawyers is all about.

Whatever our task here at law school, it should at least partly address the preservation of our precursors' past and the memories of our future. These rodents must not be allowed to defile the legacy of Charles Dewey Day; for if they remain, all Montreal will wonder why the Hall is but a tragic dusty heap. And it will be said that the place was full of nuts.

Terry Pether

Military Law

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all for dealing with offences such as wearing sloppy uniforms.

Among other things, the Charter's prohibition on double jeopardy now makes it impossible for a military person to receive a separate military sentence and then be handed over to non-military courts. But the 60 lawyers in the JAG's department are closely

watching a recent Saskatchewan case in which an "offence" under a similar RCMP code of discipline was judged not to be an "offence" under the Charter, thus weakening the double jeopardy prohibition.

The Charter has also forced an administrative change such that a charge is no longer made in the name of the commanding officer, who is also the judge for the equivalent of summary convictions.

Notwithstanding the Charter, the military trial system lacks rules of evidence. But Crowe suggested it is nevertheless fair.

"Despite almost no rules of evidence, and a lot of hearsay, in my personal experience the system is very fair -- maybe even fairer than some, if not all, of our municipal courts," he said.

JOBS & JOBS & JOBS

Quebec

A third year student is being sought by the firm of Ri~~est~~, Castiglio, Castiglio, LeBel et Schmidt for research during the summer of 1985. This firm specializes in labour law and interested students should have a good academic record and an interest in labour law. Applicants are asked to communicate with:

Mr. Marcel Ri~~est~~
Ri~~est~~, Castiglio,
Castiglio, LeBel et
Schmidt
441, de la Gauchetière est
Montréal, (Québec)
H2L 2M7
Tel.: 849-7791

A notice to this effect is posted in the Placement Centre.

The Barreau du Québec, Service d'aide à l'emploi have advertised for a number of lawyers and their notice is posted in the Centre as posting #55.

British Columbia

Second year students interested in the possibility of articles with Swinton & Company in the 1986/87 articling year should forward letters of application and resumes, including marks where available to:

Mr. Michael A. Coady
Swinton & Company
1300-1090 West Georgia
Street,
Vancouver, B.C.
V6E 3X9

In accordance with the guidelines regulating the interviewing of articling students, Swinton & Company will not make offers to prospective students prior to August 19, 1985. Interviews will accordingly be conducted prior to that date, however applications may be submitted at the above address. Swinton & Company's brochure is now available for perusal in the Admissions Office.

Ontario

Smith, Lyons, Torrance, Stevenson & May intends to engage a number of second year law students from May - August 1985. Due to the Law Society of Upper Canada's Summer Employment Guidelines, interviews of prospective students will be conducted after February 1, 1985. Interested students should forward an up-to-date resume to Mr. Glenn Hainey at Smith, Lyons, Suite 3400, The Exchange Tower, P.O. Box 420, 2 First Canadian Place, Toronto, Ontario M5X 1J3.

The Law Reform Commission of Canada has announced its Summer Research Internship Program - 1985. This program seeks to attract to the Law Reform Commission's office in Ottawa, a group of outstanding students to engage in research under the direction of the staff of the Commission. Applications must be received by March 1, 1985 so that final selection may be made by April 1, 1985. The Commission has authorized up to 8 of these internships and the successful applicants will receive \$3,600 for the 12 week period plus return transportation to Ottawa. The Law Reform's Communiqué to this effect is posted in the Centre and extra copies are available in the Admissions Office. Professor M. Somerville is the Law Reform's contact person in the Faculty of Law.

Placement Centre

It has come to the attention of this office that the whereabouts of the Placement Office seems to be a mystery among the student body. For those who do not know the exact area, it is in the annex of OCDH, down the hall from Mrs. Lederer and behind SAO, just go down the hall to the last office on the

right, room 109 and you have found the Placement Centre.

If further information re any of the posting or the information in the column is required, please do not hesitate to come to the Admissions Office and Mr. Lemieux or Mrs. Higgins will be able to help wherever possible.

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Ontario

Cont'd from p. 6

Queen's University Faculty of Law's Career and Articling Committee has made available to this office a summary of Toronto law firms indicating the size, number of articling students and type of practice. This information is available upon request in the Admissions Office.

The updated articling vacancy list (to January 18) as prepared by Osgoode Hall is now posted in the Placement Centre.

Alberta

The firm of Parlee, Irving, Henning, Mustard & Rodney are in the process of recruiting fine articling students for 1986/87. Interested students are encouraged to apply in writing to the firm before February 15, 1985 to the attention of Richard L. Dawson. Full particulars in this regard are available on the firm's notice in the Placement Centre.

Women's Rea:

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"Leggs" Lawson (at 6'8", the tallest Reas player and only woman in college basketball history to slam dunk) controlling the low post, Nos Glorieuses scratched and clawed their way to a one point lead at 1:48 of the second half. However, the Drillers were not to be denied and the Rea's unidentified coach switched his charges from a

2-1-2 zone to a box-andone, a triangle-a-two and finally; a 1-3-1 to no avail. Alas, our valiant but dainty Ladies in Black were unable to keep the overweight crew from dentistry off the boards and the Drillers prevailed over our "gals", 53-52, by hitting a gut-wrenching hoop at the buzzer.

In a hushed post-game locker room interview, this reporter squinted through steam-drenched glasses to record these comments, and other salient details.

Said Captain Duncan of the refereeing, "It was brutal, just brutal...but ooohh, was he cute."

Added Patty Lawson, "Yeah, but he's so young; I wonder if the Criminal Code has anything to say about this?"

Yet, as this article goes to press, the Reas team, so full of show and promise, is rife with controversy and dissension. Will Debbie Duncan ever recover from the near-crippling off-season surgery to regain her pre-'85 form? Will Jill Hugessen continue to boycott Rea's games to protest the Soviet presence in Afghanistan? Will Lys finally learn to tell time? And finally, will the entire Reas squad provide the lead article in the upcoming Sports Illustrated, or will it be Harper's Bazaar.

Tune in next week, sports fans; let's all be there.

CURLING

What: **Curling**

An exciting sport...involving throwing rocks and sweeping...

When: Sunday, January 20, 8:00 a.m. (i.e. 3 hours or so...after the end of the "post-mortem" party)

Organization: Superb: 12 teams, 48 curlers (47 curlers and I), 72 donuts, 2 pots of beans, salad and stew, fun, fun, fun...

How: Throw, sweep, swear, throw, sweep, swear...

Who: In particular our team.

What Happened: We won, we won, we lost.

How It Happened: We were lucky, we were lucky, we were lucky.

Who Won: Not us. Others had obviously played before. By the end Lyle's team remained undefeated.

Credits: Many thanks to Lyle Carlstrom, Shawn Cathcart, Andrea Lockwood, Dak Lysak.

Prizes: 1st - Lyle Carlstrom's team
2nd - Dale Lysak's team

See you next year for the 2nd formal curling bonspiel.

Signed
Dean's team

QUID NOVI DEADLINE

Submissions for next week's Quid should be in by Thursday, 7 February.

Women's Rea

by Bobby Knight

In the wake of the recent demise of the "Marvelous Moigners" and the perennial autumn collapse of the Expos, the question of who will assume the role of Canada's newest "Dream-team of the Eighties" has

been answered by a motley bunch of lawyers come lately, our own Lady Cagers of Chancellor Day Hall, the Women's Rea Pro Basketball team.

In the early stages of this young season, the Reas have pranced their way to a

1-1 record, posting an early win over the Pick-ups and a loss to the powerful Dental Drillers in the highly competitive Women's "A-double-plus" Professional Basketball League.

In the first game, our Lonely Ladies trailed a tightly coached Pick-up team, which employed a slick 2-2-1 four-corner delayed offense. However, piloted by Captain Debbie "Silk" Duncan ('cause she's so smooth) our heroines overcame their first-half butterflies to pull within two points with 5 minutes remaining in the opening period. Threading the needle repeatedly, Duncan's pinpoint passing permitted power forward Sheila "Shoulders" Walsh to assert her inside game against the hapless Pick-ups, who were awestruck by the fierce rebounding of the Hugesson Triplets, Jill, Lys and Gylaine.

Biting at the heels of the Pick-ups in the second half, our Rea's converted their usual 2-1-2 zone to a box-and-one and displayed a tenacious, bulldog-like defense which would have swelled the heart of Annie Langstaff herself. The victory was iced by a 30-foot hook scored by none other than Lys "Yes I know I look like Michael Jordan" Hugessen, who led all scorers with 24 points, 6 rebounds, and 5 assists.

In the second game, our Prima Donnas played a bitterly-contested duel against the defending champions, the Drillers of Dentistry. Pitted against a bigger and meatier squad, Our Reas looked to Alberta import Leslie Kelleher for muscle underneath. With Hélène "Magic" Guay bashing the boards and Patty

In a moment of calm last weekend, somewhere between hangovers, I sat on the edge of my bed, my head cupped noncomittally in my hands, my toes introspectively intertwined, and I tried to remember what life was like before mooting. And while I was thus struggling to return to the dimmer recesses of my consciousness, I was reminded of a pleasant scene I had witnessed last fall.

It was of two people throwing a boomerang into the air on the Reservoir. The day was cold and windy and gray, and the lights were just coming on in the office towers downtown, as I hurried on my way from squash to Thompson House and yet another Friday afternoon and evening. The boomerang was brightly coloured, and it arced gracefully against the sky with each throw, and then returned swiftly to earth and the outstretched arms of its handlers.

But the thing that really struck me about this scene was that two people were enjoying themselves

over something so ridiculously simple. So I stopped for a while to watch them, and it occurred to me as I did, that life is essentially a here and now kind of enterprise; and that one should enjoy things while one is doing them - and not just do them for the sake of talking about it later. (Not that boomeranging is a tremendous topic of conversation or anything, but you get the picture...)

And that is as much as I remember of this little scene. Probably I stood and watched for a few moments more, and then indulged in a beer or two while hoping wistfully that I would someday be able to impart the touching philosophical significance of what I had just observed. Who knows? Maybe I just had a glass of Perrier water and went home. The fact remains that I saw what I saw, and I thought I'd let you know.

Scott Turner

Cont'd on p. 7